

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**DONALD MALONE** : DETERMINATION  
 : DTA NO. 830944  
for Revision of a Determination or for Refund of Sales and :  
Use Taxes under Articles 28 and 29 of the Tax Law for the :  
Period August 31, 2016 through January 20, 2017. :

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Petitioner, Donald Malone, filed a petition for the revision of a determination or for refund of sales and use taxes under articles 28 and 29 of the Tax Law for the period August 31, 2016 through January 20, 2017.

On April 25, 2023, the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition pursuant to 20 NYCRR 3000.9 (a) (4). The Division of Taxation, appearing by Amanda Hiller, Esq. (Laura Krzeminski, Esq., of counsel), submitted a letter in support of the dismissal. Petitioner, appearing pro se, did not submit a response by May 25, 2023, which date began the 90-day period for the issuance of this determination. After due consideration of the documents submitted, Donna M. Gardiner, Supervising Administrative Law Judge, renders the following determination.

***ISSUE***

Whether the Division of Tax Appeals lacks jurisdiction over the petition.

***FINDINGS OF FACT***

1. Petitioner, Donald Malone, filed a petition with the Division of Tax Appeals on April 15, 2022.

2. A statutory notice or conciliation order was not attached to the petition.
3. The petition was not signed.
4. On August 18, 2022, the Division of Tax Appeals made a written request for petitioner to provide a copy of the statutory notice being protested and to sign the petition.
5. Petitioner did not provide any statutory notice nor sign the petition.
6. On April 25, 2023, the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition. The notice stated, in sum, that the Division of Tax Appeals lacked jurisdiction to review the merits of the petition because it was not in proper form.
7. On May 10, 2023, in response to the notice of intent to dismiss petition, the Division of Taxation (Division) submitted a letter that stated:

“[t]he Division is in receipt of the Notice of Intent to Dismiss the petition in the above referenced matter. As the petition submitted was not in proper form, as required by 20 NYCRR 3000.3 and Tax Law § 2008 because the petitioner neglected to include a copy of the statutory notice or conciliation order issued to petitioner and the petition is not signed on page 3 [sic] the Division is in agreement with the proposed dismissal.”

8. Petitioner did not submit a response to the notice of intent to dismiss petition.

### ***CONCLUSIONS OF LAW***

A. All proceedings brought before the Division of Tax Appeals must be commenced by the filing of a petition in accordance with the requirements of Tax Law § 2008 (1) and 20 NYCRR 3000.3 (a).

B. Pursuant to 20 NYCRR 3000.3 (b) (8), a petition shall contain, “for the sole purpose of establishing the timeliness of the petition, a legible copy of the order of the conciliation conferee if issued; if no such order was previously issued, a legible copy of any other statutory notice being protested.” In this case, no statutory notice was attached.

C. Pursuant to 20 NYCRR 3000.3 (b) (7), a petition shall contain “the signature of the

petitioner or the petitioner's representative." In this case, the petition was not signed.

D. On August 18, 2022, the Division of Tax Appeals made a written request asking petitioner to supply a statutory notice and to sign the petition. He failed to do so. Where petitioner fails to correct the petition within the time prescribed, the supervising administrative law judge will issue a notice of intent to dismiss petition (*see* 20 NYCRR 3000.3 [d] [2]). Such notice of intent to dismiss petition was issued on April 25, 2023. Petitioner failed to respond.

As petitioner failed to attach a statutory notice and sign the petition, as contemplated by Tax Law § 2008 (1), the Division of Tax Appeals lacks jurisdiction over the subject matter of the petition and, therefore, dismissal is warranted (*see* 20 NYCRR 3000.3 [d] [2]; 3000.9 [a] [4] [i]; *see Matter of Richardson*, Tax Appeals Tribunal, November 17, 2022).

E. It is ORDERED, on the motion of the supervising administrative law judge, that the petition is dismissed with prejudice as of this date.

DATED: Albany, New York  
August 10, 2023

/s/ Donna M. Gardiner  
SUPERVISING ADMINISTRATIVE LAW JUDGE